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RECENT DEVELOPMENT

STATE v. ALLEN: FELONY-MURDER DOES NOT EXIST WHEN THE FELONY OCCURS AS AN AFTERTHOUGHT TO THE ACT CAUSING DEATH

By: Emily King Watkins

The Court of Appeals of Maryland held that in order to sustain a conviction for felony-murder, the intent to commit the underlying felony must exist prior to or concurrent with the performance of the act causing the death of the victim. *State v. Allen*, 387 Md. 389, 875 A.2d 724 (2005). In so holding, the Court of Appeals aligned itself with the majority view expressed by the courts of this country. *Id.*

On the evening of October 23, 2001, Jeffery Edward Allen ("Allen") was in northwest Washington, D.C., in a neighborhood nicknamed "The Stroll" that was known as a meeting place for homosexual men. A car pulled up next to Allen and the vehicle's occupants asked him if he wished to go with them to La Plata, Maryland. Allen agreed and got into the car.

John Butler ("Butler"), the driver, dropped off all of the passengers, except for Allen, at a residence in La Plata. Butler agreed to meet one of the departing passengers at 9:00 the following morning to attend a funeral. Butler and Allen then proceeded to Butler's house in Port Tobacco. The two men engaged in consensual sex and fell asleep on Butler's bed.

Allen awoke around 9:00 the next morning and was anxious to leave Butler's house. He asked Butler if he still intended to go to the funeral, and Butler said he did not. Allen was upset, and Butler told Allen to "chill out" and have a beer. Allen became more agitated when he opened the refrigerator and saw a live rat inside. Allen asked Butler to drive him back to Washington, D.C., but Butler remained in bed.

Finally, Allen figured that if he told Butler he was going to drive himself back to Washington, D.C., Butler would get out of bed. According to Allen's written statement to the police, he picked up the keys and announced that he was driving himself back. Butler told him to wait a minute and Allen heard Butler rummaging in the room.

Allen started to walk back towards the room and saw Butler coming at him with a blanket draped over his arm. Allen grabbed a knife from the top of the refrigerator for protection. Allen pushed Butler back into the room where they struggled. Butler fell onto the bed, but continued to come at Allen, so Allen stabbed Butler repeatedly. Allen ran toward the telephone, but it did not work, so he grabbed Butler's car keys and drove off. Allen eventually made his way to a phone and called 911 to report the incident.

Butler died from the stabbing, and Allen was indicted by the Grand Jury for Charles County. Allen was then tried before a jury in the Circuit Court for Charles County on several charges stemming from Butler's killing and the subsequent robbery of Butler's car. Allen was convicted of first degree felony-murder, second degree murder, robbery with a dangerous or deadly weapon, robbery, theft, and two weapons counts. The jury acquitted Allen of first degree premeditated murder.

Allen appealed this decision to the Court of Special Appeals of Maryland, arguing that the trial court erroneously instructed the jury, which affected his robbery and first degree felony-murder convictions. The trial court's jury instruction explained that the requisite connection between the use of force and intent to deprive the victim of property was satisfied as long as the two were "part and parcel of the same occurrence which involved the death." The Court of Special Appeals reversed Allen's first degree felony-murder conviction, holding that a robbery that occurs after the killing cannot support a conviction for felony murder. The Court of Appeals of Maryland granted the state's petition for writ of certiorari to determine whether the jury instruction correctly stated the law of Maryland on felony-murder.

The Court of Appeals found that the jury instruction was incorrect and that "a defendant is guilty of first-degree felony-murder only if the defendant's intent to commit the predicate enumerated felony arises prior to, or concurrent with, the conduct resulting in death." *Id.* at 396, 875 A.2d at 728. In making its decision, the court looked to MD. CODE ANN. CRIM. LAW § 2-201 (2002 & Supp. 2004), for the definition of first degree felony-murder. *Allen*, 387 Md. at 396, 875 A.2d at 728. The statute provides that, "[a] murder is in the first degree if it is . . . committed in the perpetration of or an attempt to perpetrate . . . robbery under § 3-402 or § 3-403 of this article." *Id.* at 397, 875 A.2d at 729. Based upon this statute, the State must prove beyond a reasonable doubt that "a murder was 'committed in the

perpetration of or an attempt to perpetrate' a robbery or attempted robbery," for a conviction of first degree felony-murder to stand. *Id.*

The Court looked to cases throughout the country, and it determined that the majority of jurisdictions have held that to sustain a felony-murder conviction, the felony cannot be an afterthought to the killing. *Id.* at 398, 875 A.2d at 729. This interpretation of the felony-murder rule is known as the "narrow view." *Id.* at 401, 875 A.2d at 731. The felony-murder rule was originally developed to deter dangerous and violent felonies, by punishing the perpetrator with first degree murder instead of a lesser offense if he unintentionally killed his victim during the commission of a felony. *Id.* at 398, 875 A.2d at 729. The Court found there is no basis for the deterrent if the accused did not intend to commit the felony at the time of the killing. *Id.* at 400, 875 A.2d at 731.

The primary theoretical foundation of the rule is also compromised if the felony is committed after the victim is dead. *Id.* at 402, 875 A.2d at 732. The crime of murder requires a malicious *mens rea*. *Id.* "Under the felony-murder rule, the malice involved in the underlying felony is permitted to stand in the place of the malice that would otherwise be required with respect to the killing." *Id.* The Court reasoned that if there is no underlying felony, there is no malicious *mens rea* to transfer to the homicide. *Id.* at 403, 875 A.2d at 732.

The Court of Appeals likewise found that a minority of jurisdictions adhere to the view that if there is a continuity of action between the killing and the felony, then the felony-murder rule applies, even if the felony occurs after the killing. *Id.* at 399, 875 A.2d at 730. These courts reason that the act causing the death is part and parcel of the same action as the felony. This interpretation of the rule is known as the "broad view." *Id.*

The Court of Special Appeals subscribed to the "broad view" in *Higginbotham v. State*, 104 Md. App. 145, 655 A.2d 1282 (1995). *Id.* at 399, 875 A.2d at 730. The Court of Appeals stated its disapproval of the holding in *Higginbotham* in *Metheny v. State*, 359 Md. 576, 755 A.2d 1088 (2000), saying that the lower court stretched the scope of the felony-murder rule too far. *Id.* at 400, 875 A.2d at 730. Here the Court of Appeals overruled *Higginbotham* by applying the "narrow view" of the felony-murder doctrine, which is followed by the majority of jurisdictions.

The Court of Appeals of Maryland held that in order to sustain a conviction for felony-murder, the intent to commit the underlying felony must exist prior to or concurrent with the performance of the

act causing the death of the victim. This holding conforms to the definition of first degree felony-murder in MD. CODE ANN. CRIM. LAW § 2-201 (2002 & Supp. 2004), and the “narrow view” held by the majority of courts in this country. The Court believes that the felony-murder rule serves as an appropriate deterrent for a person who is planning to commit a dangerous felony, but that the rule should not be a “catch-all” means to convict a defendant of first degree murder. The Court’s holding resolves any misunderstanding of the felony-murder doctrine by the lower courts in the State of Maryland by clarifying the appropriate interpretation of the rule. Future defendants, who commit both a felony and a murder in the same act in the State of Maryland, will be convicted of felony-murder only if they formed the intent to commit the underlying felony prior to or concurrent with the murder of the victim, not if the felony was an afterthought to the murder.